

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2332 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
1 to 5 No

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NARANBHAI MOTIBHAI PATEL

Versus

PRESIDING OFFICER

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Appearance:

No one appears on behalf of the petitioner

No one appears on behalf of the respondents

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CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 18/06/98

ORAL JUDGEMENT

1. Through this Special Civil Application the petitioner has challenged the order dated 4.7.86 passed by the Judge, Labour Court, Vadodara in Recovery Application No.392/83 whereby the petitioner's application under S.32(C)(2) of the Industrial Disputes Act was rejected. I have gone through the contents of the petition and the impugned order.

2. The contents of para 6 of the impugned order

dt.4.7.86 show that as per the witness, namely, Babubhai Jethalal Shah, who was examined on behalf of the Vadodara Municipal Corporation, the petitioner was first appointed on 14.9.72 and prior to it he was working as daily wage worker in the Electrical Branch. This witness of the Municipal Corporation, Vadodara has also stated that the recruitment of wireman was held and in this recruitment and selection name of the petitioner was at Sr.No.3 in the select list of the selected candidates and further that he was given appointment as a wireman in the Building Branch. The petitioner's case is that he was appointed as wireman on permanent basis with effect from 1.1.72 vide order dated 20.10.72 in pursuance of the Award of the Industrial Tribunal in Reference (IT) No.55 of 1967. He was then transferred as wireman of Land & Estate Branch, Gandhinagar Grih vice Shri Jashwantsinh Sardarsinh Chauhan vide order dated 25.4.74 and there from he was transferred as an Operator in Hydraulic Sewage works Branch for administrative convenience by order dated 30.8.76. Reference in this regard has also been made, in the petitioner's application Annexure 'A' for recovery, at page 2 to an order dated 15.9.77. Petitioner's case that the post of Operator and Wireman are identical and interchangeable has also been supported by the witness of the Municipal Corporation, Vadodara, namely, V.R.Mehta as has been mentioned in para 5 of the impugned order. This witness of the Corporation has stated that he was a Deputy Engineer in the Sewage Disposal Works of the Hydraulic Branch of the Municipal Corporation, Vadodara and the petitioner was on duty in his branch since 30.8.76. He has also stated that the Educational qualifications of Wireman and Operator are same and the wireman and operator could be transferred inter se. The contents of para 7 of the impugned order show that the witness B.P.Parikh, who was examined as a witness on behalf of the Municipal Corporation, Vadodara, has stated that the grade of the wireman was higher than that of operator prior to the Pay Commission and both the grades were merged with effect from 1.1.73 when they became identical. The petitioner's grievance is that merely because he has been transferred as an operator, he cannot be put to any prejudice for the purpose of payment in the grade of the Wireman. Thus it is the admitted position that the educational qualifications for wireman and operator were the same, the petitioner was appointed as a wireman and, therefore, if he was paid only as an operator and not as wireman, he was certainly entitled to the difference. The petitioner has claimed the amount under the Award which came into force from 1.4.77 i.e. the date from which the grades of the wiremen were revised as per the Award in Reference (IT) No.421/77 of

the Industrial Tribunal.

2. The Labour Court has rejected the petition of the petitioner on the ground that he had never worked as wireman from 1.4.77 and that he was an operator from 1977. Once it is established by the witnesses of the Corporation itself that the posts of wireman and operator were interchangeable, merely because the petitioner was transferred and posted as operator he cannot be made to suffer on account of such a fortuitous circumstance, which was beyond his control and comprehension and for that purpose he was left only to the sweet will and desire of the authorities of the Municipal Corporation. The petitioner has only claimed a sum of Rs.2885.48 Ps. with interest at the rate of 12% per annum in terms of the Award in Reference (IT) No.421 of 1977 and he has claimed the arrears from 1.4.77. I do not find any basis for the denial of this claim of the petitioner merely because he was transferred as operator from the post of wireman and I find that the Labour Court, Vadodara has committed an error of law apparent on the face of the record in denying this claim to the petitioner by saying that in fact he did not work as wireman after 1.4.77. It has also to be observed that it was only on account of his posting as operator that he could not have worked as wireman and for this fortuitous circumstance, the petitioner could not have been denied his due.

3. For the reasons aforesaid, the impugned order passed by the Labour Court, Vadodara on 4.7.86 in Recovery Application No.392/83 deserves to be quashed and set aside and the same is hereby set aside. The respondents are directed to make the payment of the due amount to the petitioner treating him to be the wireman for the period on and from 1.4.77 by computing the difference of arrears accordingly. Whereas the petitioner himself has filed the Recovery Application in the year 1983 in terms of the Award of 1977 and further the litigation has been going on, I do not find any basis to sustain the claim with regard to the interest for the period in question. This Special Civil Application is accordingly allowed and the Rule is made absolute in the terms as aforesaid. No order as to costs.